IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 383 (MS) OF 2005

Swami Kailashanand Mission Trust,
Through Swami Kailashanand,
Village-Jauk, Talla Udaipur, Pauri Garhwal.

..... Defendant/Petitioner.

Versus

Swargashram Trust through its representative, Manager C.P. Sharma, Swargashram, Village-Jauk, Talla Udaipur, Pauri Garhwal. .....Plaintiff/Respondents.

Sri A. Vashisth, Advocate for the petitioner.

Dated: 25.04.2006

RAJESH TANDON. J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the orders dated 10th March, 2005 and 07.04.2005 passed by the Civil Jude (Junior Division) Kotdwar District Pauri Garhwal O.S. No. 63 of 2004.

Briefly stated, a suit was filed by the plaintiff/respondent in the Court of Civil Judge (Junior Division) Kotdwar, Pauri Garhwal praying for mandatory injunction for demolition of the roof, which, according to the plaintiff, has been extended into and over its Khet No. 183. A written statement was filed by the defendant. On 16th February, 2005 issues were framed.

The grievance of the petitioner is that after framing of the issues, the plaintiff has filed certain documents, which has been allowed vide order dated 10th March, 2005. Learned counsel for the petitioner has submitted that after framing of this issues, it was not proper for the court below to have

accepted the documents as will appear from Order XIII Rule 1 and 2. Order XIII Rule 1 and 2 C.P.C. are quoted below:-

"1. Documentary evidence to be produced [at or before the settlement of issues].-*(1) The parties or their pleaders shall produce, [at or before the settlement of issues], all the documentary evidence or every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.*

(2) The Court shall receive the documents so produced : Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

2. Effect of non-production of documents.- *2[(1)] No. documentary evidence in the possession or power of any party which should have been, but hands not been, produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.*

[(2) Nothing in sub-rule (1) shall apply to documents.-

(a) produced for the cross-examination of the witnesses of the other party, or

(b) handed over to a witness merely to refresh his memory.]"

In view of the aforesaid provisions, the learned Civil Jude is directed to record the reasons for filing the documents. In case the plaintiff satisfies, the Court below shall record the reasons under Order XIII Rule 2 of the Code of Civil Procedure for accepting the documents even after the

submission of the issues, the matter is, therefore, sent back to the court below for passing fresh order for consideration of the documents as required under Order XIII Rule 1 and 2 of the Code of Civil Procedure.

Subject to the aforesaid observation, writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

25.04.2006
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